IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1880 OF 2002
WITH
SUIT NO.2299 OF 2002

Mrs. Madhuri R. Khanna. ..Plaintiff.

V/s.

Umesh Chandra Khanna. ..Defendant.

WITH

SUIT NO.4182 OF 1994

Umesh Chandra Khanna. ..Plaintiff.

V/s.

Mrs. Madhuri R.Khanna. ..Defendant.

Mr.D.H.Mehta i/b. R.D.Suvarna for plaintiff in Suit No.2299/02 and for defendant in Suit No.4182/1994.

Mr.K.K.V.Kurup for Defendant in Suit No.2299/02 and for plaintiff in Suit No.4182/1994.

CORAM: A.M.KHANWILKAR,J

DATE : APRIL 16, 2007.

P.C. :

1. Suit No.4182 of 1994 not on board, taken on board with the consent of the parties.

2. Heard counsel for the parties.

3. The plaintiff has pressed this Motion only in terms of prayer clauses (a), (b) and (c), which read

thus:

> "(a) That pending the hearing and final disposal of the suit, the Defendant be restrained by an order and injunction of this Hon'ble Court from using any bed room on the 2nd floor or the bed-room and/or living room on the 1st floor in his use and occupation as an office or for the purpose of his carrying on business activities;
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> (b) That pending the hearing and final disposal of the suit, the Defendant be restrained by an order and injunction of this Hon'ble Court from using the premises shown shaded on the Plan Exhibit "A" to the plaint or any part thereof for the purpose of conducting coaching classes and/or tuition;
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> (c) That pending the hearing and final disposal of the suit, the Defendant be restrained by an order and injunction of this Hon'ble Court from alienating, encumbering, parting with possession or creating any third party interest of any nature whatsoever in respect of the premises shown shaded on the Plan Exhibit "A" to the plaint or any part thereof;"

4. At the hearing of the Motion, counsel for the defendant on instructions of the defendant, who is present in the court, made statement that the premises referred to in the plaint are used exclusively for residential purpose by the defendant and his family members. That statement is accepted. In view of this statement, it is not necessary to examine the reliefs in terms of prayer clauses (a) and (b).

5. In so far as relief in terms of prayer clause

(c) is concerned, as the suit property referred to in the plaint stands in the name of both the parties jointly, without going into the correctness of the stand of the plaintiff-that she has singularly contributed towards the costs of the said premises- both the parties agree to maintain status quo with regard to the suit property as of today. In other words, both parties agree to abide by reliefs in terms of prayer clause(c) till the disposal of the suit. That assurance is accepted.

6. It is made clear that the assurance given by the parties, as recorded in the earlier part of this order is not an expression of opinion on the merits of the case in any manner. The suit will have to be decided on its own merits in accordance with the law, uninfluenced by the above said assurance given before the Court.

7. This Motion can be disposed of on the above terms.

8. However, as the dispute is between close relatives, i.e. sister-in-law and brother- in-law and as it appears that there is one more suit pending between the parties, it was suggested to the parties

to consider amicable settlement. The counsel appearing for the parties on instructions of the respective parties instead suggested that the parties will prefer arbitration so as to resolve all the contentious issues between the parties in respect of the suit properties referred to in the present Suit No.2299 of 2002 as well as Suit No. 4182 of 1994. The parties have also agreed to appoint Mrs. Justice K.K.Baam (former Judge of this Court), to act as a sole Arbitrator.

9. Accordingly, by consent of the parties, Mrs. Justice K.K.Baam is appointed as sole-Arbitrator to resolve all the contentious issues between the parties pertaining to suit property. The Arbitration proceeding will be decided in terms of provisions of the Arbitration and Conciliation Act, 1996. The parties through counsel assure that the Arbitration charges will be borne equally by both the parties, as may be indicated by the sole Arbitrator. Arbitration proceeding may be disposed of expeditiously preferably within six months from today.

10. In view of this order, both the suits between the parties as well as derivative proceedings therein stand disposed of with no order as to costs. Refund

as per rules.

11. Interim arrangement ordered in terms of this order as well as in the previous suit to continue till further orders to be passed by the Arbitrator after entering upon the Arbitration proceeding.

12. In view of the arrangement arrived at, counsel for both the sides on instructions fairly state that the insinuation or any objectionable statements made in the affidavits filed before this Court against each other in the present Motion would stand withdrawn unconditionally. That statement is accepted.